

Presented to the Court by the foreman of the  
Grand Jury in open Court, in the presence of  
the Grand Jury and FILED in the U.S.  
DISTRICT COURT at Seattle, Washington.

NOVEMBER 18 2010

WILLIAM M. McCOOL, Clerk

By  Deputy

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

FREDERICK DARREN BERG,

Defendant.

NO. CR10-0310RAJ

SUPERSEDING INDICTMENT

The Grand Jury charges that:

**COUNTS 1-9**

(Wire Fraud)

**I. The Offense**

1. Beginning at an exact time unknown, but no later than sometime in 2003, and continuing until in or around August 2010, at Seattle and elsewhere, within the Western District of Washington, FREDERICK DARREN BERG did knowingly and willfully devise and execute and attempt to execute a scheme and artifice to defraud, and for obtaining money and property by means of material false and fraudulent pretenses, representations, and promises; and in executing and attempting to execute this scheme and artifice, did knowingly cause to be transmitted in interstate commerce by means of wire communication, certain signs, signals and sounds.

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**II. Object of the Scheme and Artifice to Defraud**

2. The object of the scheme and artifice to defraud was to defraud investors by falsely representing that FREDERICK DARREN BERG was using investor funds to purchase seller financed real estate contracts, real estate, mortgage backed securities and also to make hard money loans, all of which he falsely claimed would generate profits to repay the investors. In fact, as he then well knew, during the course of the scheme and artifice to defraud, FREDERICK DARREN BERG misappropriated millions of dollars in investor funds which he used for his own benefit and to pay off the loans of earlier investors in order to conceal his false statements and continue his scheme to defraud.

**III. Introduction - The Meridian Investor Funds and CS Note Holdco**

3. Between January 2001, and August 2010, FREDERICK DARREN BERG created and operated a series of investment funds purportedly for the purpose of investing in seller financed real estate contracts, hard money loans, real estate and mortgage backed securities. These funds were known as: Meridian Mortgage Investors Funds 1, 2, 3, 5, 6, 7, 8, 9, and 10 (the mortgage investment funds); Meridian Real Estate Opportunity Funds 1 and 2 (the real estate investment funds); and CS Note Holdco (the mortgage backed security investment fund). After failing to make recurring interest payments to investors on or about June 15, 2010, the investors in Funds 2, 5, 7, and 8 filed a petition with the United States Bankruptcy Court for the Western District of Washington to force the funds into Chapter 11 bankruptcy proceedings. Funds 6, 9, and 10 were added to the bankruptcy proceedings on August 4, 2010, and Real Estate Opportunity Funds 1 and 2 were added to the bankruptcy proceedings on August 16, 2010. On or about July 27, 2010, FREDERICK DARREN BERG filed a petition for personal bankruptcy.

4. The mortgage investment funds were purportedly established to primarily invest in the purchase of seller financed real estate contracts and to fund short term loans backed by mortgages on real property. Payments to investors in the mortgage investment funds were purportedly to be made from the cash flows generated by borrower payments. Funds 1, 2, 3, 5, 6, 7, and 8 of the mortgage investment funds were established between

1 January 2001, and February 2004. Funds 9 and 10 of the mortgage investment funds  
2 were established in November 2009.

3 5. The real estate investment funds were purportedly established to invest in  
4 the purchase of real estate. Payments to investors in the real estate investment funds were  
5 purportedly to be made from profits generated through the sale of properties purchased by  
6 the funds. Funds 1 and 2 of the real estate investment funds were established between  
7 March and July 2009. FREDERICK DARREN BERG raised approximately \$7.65  
8 million from over 60 investors in the real estate investment funds between March 2009  
9 and August 2010.

10 6. CS Note Holdco was purportedly established to invest in the purchase, from  
11 their current holders, of promissory notes previously issued by Funds 5, 7, and 8 at a  
12 minimum discount of thirty percent. Payments to investors in CS Note Holdco were  
13 purportedly to be made from the cash flow received from CS Note Holdco's ownership of  
14 the Fund 5, 7, and 8 notes. FREDERICK DARREN BERG raised approximately  
15 \$4,055,000 from 15 investors in CS Note Holdco between September 2009, and  
16 December 2009.

17 7. FREDERICK DARREN BERG exercised exclusive control over the  
18 operation of each of the investment funds and was the only person with access to the  
19 funds' bank records. FREDERICK DARREN BERG was the sole signatory on the  
20 funds' bank accounts and the only person with access to all of the funds' accounting  
21 records including records related to the funds' investors, the funds' assets, and the funds'  
22 expenses.

#### 23 **IV. Manner and Means of the Scheme and Artifice to Defraud**

##### 24 **A. Defendant's Fraud and False Representations Regarding the Meridian** 25 **Mortgage Investment Funds.**

26 8. It was part of the scheme and artifice to defraud that FREDERICK  
27 DARREN BERG falsely represented that the Meridian Mortgage Investment Funds  
28 would use investor money solely to purchase seller financed real estate contracts, fund

1 short term loans, purchase real estate and pay management and servicing fees to  
2 FREDERICK DARREN BERG and his related companies. In truth and in fact, as  
3 FREDERICK DARREN BERG then well knew, he misappropriated millions of dollars of  
4 the investors' money for his other business interests including the creation and operation  
5 of a luxury bus company named MTR Western and several subsidiaries, the purchase of  
6 several multi-million dollar yachts and private jets, the purchase and remodeling of a  
7 multi-million dollar waterfront mansion on Mercer Island, Washington, the purchase  
8 and/or lease of luxury automobiles, and other personal expenses.

9       9. It was further part of the scheme and artifice to defraud that FREDERICK  
10 DARREN BERG also used money from new investors in the mortgage investment funds  
11 to make interest payments and cover redemption requests from existing investors in the  
12 funds. As to Funds 9 and 10, FREDERICK DARREN BERG never purchased any assets  
13 as promised in the promotional and offering materials for the funds, but instead used all  
14 of the investor money generated from the promotion of these funds to cover interest  
15 payments and redemption requests for investors in other Meridian funds and for his own  
16 personal expenses.

17       10. It was further part of the scheme and artifice to defraud that in order to  
18 conceal and continue his scheme to defraud, FREDERICK DARREN BERG fabricated  
19 false records for many of the seller financed real estate contracts and loans purportedly  
20 purchased or financed by the funds. These false records included fake loan files with  
21 fake appraisal reports and fake title reports, and fake loan servicing files with fake  
22 accounting records and fake payment histories.

23       11. It was further part of the scheme and artifice to defraud that in order to  
24 conceal and continue his scheme to defraud, FREDERICK DARREN BERG used these  
25 false records to book fake assets on behalf of the funds in order to mislead investors and  
26 auditors as to the true health and makeup of the mortgage investment funds' asset  
27 portfolios.

28       12. It was further part of the scheme and artifice to defraud that in order to

1 conceal and continue his scheme to defraud, FREDERICK DARREN BERG fabricated  
2 false bank statements used to mislead investors and auditors as to the true health of the  
3 mortgage investment funds.

4 13. It was further part of the scheme and artifice to defraud that in order to  
5 conceal and continue his scheme to defraud, FREDERICK DARREN BERG mislead  
6 independent auditors hired to audit the funds in order to conceal his false statements and  
7 continue his scheme to defraud. In or around August 2007, FREDERICK DARREN  
8 BERG opened dozens of private mail boxes (PO Boxes) in the names of fabricated  
9 borrowers who were on a list of borrowers who were to receive loan confirmation letters  
10 from an independent auditor. FREDERICK DARREN BERG placed automatic mail  
11 forwarding instructions on the PO Box addresses to forward any mail received to an  
12 address he controlled in Seattle, Washington. FREDERICK DARREN BERG then listed  
13 those PO Box addresses on the fake loan files. When the independent auditor sent the  
14 loan confirmation letters, FREDERICK DARREN BERG received the letters at the  
15 address he controlled, completed the confirmations, and mailed the confirmations back to  
16 the independent auditor. FREDERICK DARREN BERG also used the fake loan files,  
17 fake loan servicing files, fake bank account statements and fabricated accounting  
18 worksheets to mislead the independent auditors as to the true health and makeup of the  
19 mortgage investment funds.

20 14. It was further part of the scheme and artifice to defraud that in order to  
21 conceal and continue his scheme to defraud, FREDERICK DARREN BERG issued  
22 annual reports to investors in the funds that falsely represented the number and value of  
23 assets owned by the funds.

24 **B. Defendant's Fraud and False Representations Regarding the Meridian Real**  
25 **Estate Investment Funds.**

26 15. It was further part of the scheme and artifice to defraud that FREDERICK  
27 DARREN BERG falsely claimed that the Meridian Real Estate Investment Funds would  
28 use investor money solely to purchase real estate and pay management and servicing fees

1 to BERG and his related companies. In truth and in fact, as FREDERICK DARREN  
2 BERG then well knew, he created the Meridian Real Estate Investment Funds for the  
3 purpose of raising money to make interest payments and redemption payments to  
4 investors in other funds and to fund his own personal expenses.

5 16. It was further part of the scheme and artifice to defraud that FREDERICK  
6 DARREN BERG did not use any of the money raised from investors in the real estate  
7 investment funds to purchase assets as promised in the funds' promotional and offering  
8 materials. Instead, FREDERICK DARREN BERG used all of the investor money  
9 generated from the promotion of these funds to cover interest payments and redemption  
10 requests for investors in other Meridian funds and for his own personal use.

11 **C. Defendants Fraud and False Representations Regarding CS Note Holdco.**

12 17. It was further part of the scheme and artifice to defraud that FREDERICK  
13 DARREN BERG falsely claimed that CS Note Holdco would use investor money solely  
14 to purchase notes previously issued by Funds 5, 7, and 8, and then held by a Bellevue,  
15 Washington-based investment advisory firm at a discount of no less than 30% off face  
16 value. In truth and in fact, as FREDERICK DARREN BERG then well knew, he used  
17 the investors money to pay the Bellevue, Washington-based investment advisory firm  
18 money it was owed for investments in other Meridian funds and to fund his own personal  
19 expenses.

20 18. It was further part of the scheme and artifice to defraud that FREDERICK  
21 DARREN BERG falsely represented to investors in CS Note Holdco, that a purported  
22 agreement with the Bellevue, Washington-based investment advisory firm to sell its notes  
23 at a 30% discount was effectively completed, was in the process of being "papered," and  
24 would be signed within days. In truth and in fact, as FREDERICK DARREN BERG then  
25 well knew, no such agreement was ever completed or in process.

26 19. It was further part of the scheme and artifice to defraud that FREDERICK  
27 DARREN BERG falsely represented that he was negotiating with a third party who was  
28 purportedly going to purchase the notes from CS Note Holdco at a greater price than CS



1 Note Holdco was to pay the Bellevue, Washington-based investment advisory firm. In  
2 truth and in fact, as FREDERICK DARREN BERG then well knew, there was no third  
3 party negotiating for the purchase of the notes.

4 20. It was further part of the scheme and artifice to defraud that in order to  
5 convince investors of the veracity of his claim that a third party was negotiating with him  
6 for the purchase of the notes, FREDERICK DARREN BERG fabricated e-mail  
7 correspondence between himself and a fictitious potential buyer named "John Arlett." In  
8 truth and in fact, as FREDERICK DARREN BERG then well knew, "John Arlett" was an  
9 alias name used by FREDERICK DARREN BERG and the e-mail correspondence was  
10 entirely fictional.

11 **D. Losses Resulting from the Scheme and Artifice to Defraud**

12 21. It was further part of the scheme and artifice to defraud that between  
13 January 2001, and August 2010, FREDERICK DARREN BERG raised approximately  
14 \$280 million (not including accrued interest rolled over into new investments) from  
15 approximately 500 investors in his investment funds. As a result of FREDERICK  
16 DARREN BERG's scheme and artifice to defraud, victims lost approximately \$100  
17 million that he used for his personal benefit and to promote his scheme to defraud.

18 **V. Execution of the Scheme and Artifice to Defraud**

19 22. On or about the below-listed dates, within the Western District of  
20 Washington and elsewhere, FREDERICK DARREN BERG, for the purpose of executing  
21 the aforementioned scheme and artifice to defraud and to obtain money by means of false  
22 and fraudulent pretenses, representations, promises and omissions of material facts, and  
23 attempting to do so, did knowingly and intentionally cause to be transmitted, in interstate  
24 commerce by means of a wire communication, certain signs, signals, and sounds, that is,  
25 wire transfers of funds, between investor accounts and accounts under his control, each of  
26 which was transmitted in interstate commerce via the Fedwire system in New Jersey to  
27 the Western District of Washington:  
28

Count	Date	Wire Transaction	Amount
1	04/15/2005	Wire transfer from the Citibank account of M.S. which represented an investment into Meridian Mortgage Investors Fund VII, to Commerce Bank account ***4410 of MPM Investor Services (FBO MMIFII)	\$200,000.00
2	03/02/2006	Wire transfer from the Keybank account of the J.A. Trust, which represented an investment into Meridian Mortgage Investors Fund VII, to Commerce Bank account ***4429 of Meridian Mortgage Investors Fund VIII	\$200,000.00
3	10/27/2006	Wire transfer from the Mellon bank account of the A.S. Trust, which represented an investment into Meridian Mortgage Investors Fund VII, to Commerce Bank account ***4410 of MPM Investor Services (FBO MMIFII)	\$150,000.00
4	02/05/2007	Wire transfer from the Citibank account of J.D. which represented an investment into Meridian Mortgage Investors Fund VI, to Commerce Bank account ***2812 of Meridian Mortgage Investors Fund VI, LLC	\$200,000.00
5	06/04/2007	Wire transfer from the Wells Fargo account of K. & K.H. which represented an investment into Meridian Mortgage Investors Fund VIII, to Commerce Bank account ***4429 of Meridian Mortgage Investors Fund VIII, LLC	\$300,000.00
6	04/30/2009	Wire transfer from the Wells Fargo account of D.R. which represented an investment into Meridian Mortgage Investors Fund II, to Commerce Bank account ***4356 of Meridian Mortgage Investors Fund II, LLC	\$650,000.00
7	09/18/2009	Wire transfer from the Wachovia Bank account of K.K., which represented an investment into CS Note Holdco, to Commerce Bank account ***6894 of CS Note Holdco	\$500,000.00



8	04/26/2010	Wire transfer from the Viking Community Bank account of R.W., which represented an investment into Meridian Mortgage Investors Fund IX, to Commerce Bank account ***4313 of Meridian Partnership Management Inc.	\$236,550.00
9	05/27/2010	Wire transfer from the Wells Fargo Bank account of C.B., which represented an investment by C.B. into Meridian Mortgage Investment Fund VII, to Commerce Bank account ***4410 of MPM Investor Services (FBO MMIFVII)	\$495,000.00

All in violation of Title 18, United States Code, Sections 1343 and 2.

**COUNT 10**

(Money Laundering)

On or about June 29, 2006, within the Western District of Washington, FREDERICK DARREN BERG did knowingly engage in a monetary transaction in criminally derived property of a value greater than \$10,000.00 and derived from specified unlawful activities - namely, wire fraud, a violation of Title 18, United States Code, Section 1343, to wit: a transfer of \$1,000,000.00 from the Commerce Bank account \*\*\*\*4313 of Meridian Partnership Management, Inc. to the Commerce Bank account \*\*\*\*9601 of FREDERICK DARREN BERG.

All in violation of Title 18, United States Code, Section 1957.

**COUNT 11**

(Money Laundering)

On or about May 10, 2007, within the Western District of Washington, FREDERICK DARREN BERG did knowingly engage in a monetary transaction in criminally derived property of a value greater than \$10,000.00 and derived from specified unlawful activities - namely, wire fraud, a violation of Title 18, United States Code, Section 1343, to wit: a transfer of \$1,000,000.00 from the Commerce Bank account

1 \*\*\*\*2804 of Meridian Partnership Management, Inc. to the Commerce Bank account

2 \*\*\*\* 9601 of FREDERICK DARREN BERG.

3 All in violation of Title 18, United States Code, Section 1957.

4 **COUNT 12**

5 (Bankruptcy Fraud - Asset Concealment)

6 Beginning on or about July 27, 2010, and continuing through the present,  
7 defendant FREDERICK DARREN BERG, in a matter pending before the United States  
8 Bankruptcy Court for the Western District of Washington, *In Re: Frederick Darren Berg*,  
9 Case No. 10-18668 (Bankr. W.D. Wash.), knowingly and fraudulently concealed and  
10 caused to be concealed from the trustee appointed pursuant to Title 11, United States  
11 Code, Section 701(a)(1), certain personal property belonging to a bankruptcy estate,

12 ///

13 ///

14 ///

1 including: 1) approximately \$398,773.57 that represented the proceeds from the sale of  
2 real property on July 28, 2010; 2) a brokerage account in the name of DB517 LLC at TD  
3 Ameritrade, and; 3) an interest in a limited liability company named DB517 LLC.

4 All in violation of Title 18, United States Code, Section 152(1).


5 A TRUE BILL:

6 DATED: NOV 18<sup>th</sup> 2010

7  
8 (Signature of Foreperson redacted pursuant to  
9 the policy of the Judicial conference)  
10 FOREPERSON

11   
12 JENNY A. DURKAN  
13 United States Attorney

14  
15   
16 CARL BLACKSTONE  
17 Assistant United States Attorney

18  
19   
20 NORMAN M. BARBOSA  
21 Assistant United States Attorney